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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,469	01/23/2002	Hubert Metzner	06478.1464	7506 8
7590 10/02/2003 Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER LE, HOA VAN	
			ART UNIT 1752	PAPER NUMBER

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AR

Office Action Summary

Application No.

10/052,469

Applicant(s)

METZNER ET AL.

Examiner

Hoa V. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 with the independent claim 1 as the main invention is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 April 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5&7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

This application is before the examiner for consideration on the merits.

I. Applicants' prior art submissions filed on 23 January and 30 May 2003 have been considered. There are more than one reference being found to be sufficiently disclosed, taught and suggested the claimed invention.

II. In a method claim, processing steps are controlled for a patentability and other material embodiments are secondary.

III. The independent claim 1 is considered as the main invention. Dependent claims 2-23 are secondary and would be rejoined with the main invention of claim 1 when it is found to be allowable.

IV. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 with the independent claim 1 as the main invention are rejected under 35 U.S.C. 103(a) as being unpatentable Jacobs et al (4,643,876 as submitted).

(1) It is conventional or well known in the art that hydrogen peroxide is biocidal agent.

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(2) It is conventional or well known in the art to use a chamber to contain and sterilize a material.

(3) It is conventional or well known in the art to use a negative atmospheric pressure to enhance biocidal process before and/or after a material being contact with a biocidal agent.

(4) It is conventional or well known in the art to use a plasma process to enhance a biocidal process.

(5) It is conventional or well known in the art to ventilate the processed chamber to atmospheric pressure to safely open the processed chamber.

(6) It is also conventional or well known in the art to sterilizing a material at less than 39°C.

One in the art has been working in and around with mixing and matching the above embodiments to find the best or most effect process to sterilize a material. Evidence can be seen in at least Jacobs et al. Please see the whole disclosure or the applied reference, especially at col.3:16-50 and 5:45 to 6:7. Since Jacobs et al disclose, teach and suggest the main and essential embodiments of the claimed invention, the above claims are found to be rendered prima facie obvious by Jacobs et al.

Since the processing steps and the material in the claimed invention are found to be conventional or well known in the art, a patentable may be obtained by objectedly showing or producing an unusual or unexpected result over the applied reference on the record. An argument with respect to working in or around with mixing and matching a processing step and/or material without producing or showing an unusual or unexpected result could be an obvious variant in the art, have and are given a little to no value. Accordingly, applicants are urged to early show or

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provide an unusual or unexpected result over the applied reference. An initial search has found about a dozen of references to be next in line to be applied.

V. Claims 1-23 with the independent claim 1 as the main invention are rejected under 35 U.S.C. 103(a) as being unpatentable Graves et al (6,159,422 as submitted).

(1) It is conventional or well known in the art that hydrogen peroxide is biocidal agent.

(2) It is conventional or well known in the art to use a chamber to contain and sterilize a material.

(3) It is conventional or well known in the art to use a negative atmospheric pressure to enhance biocidal process before and/or after a material being contact with a biocidal agent.

(4) It is conventional or well known in the art to use a plasma process to enhance a biocidal process.

(5) It is conventional or well known in the art to ventilate the processed chamber to atmospheric pressure to safely open the processed chamber.

(6) It is also conventional or well known in the art to sterilizing a material at less than 39°C.

One in the art has been working in and around with mixing and matching the above embodiments to find the best or most effect process to sterilize a material. Evidence can be seen in at least Graves et al. Please see the whole disclosure or the applied reference, especially at col.19:8 to 20-33. Since Graves et al disclose, teach and suggest the main and essential embodiments of the claimed invention, the above claims are found to be rendered prima facie obvious by Graves et al.

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Since the processing steps and the material in the claimed invention are found to be conventional or well known in the art, a patentable may be obtained by objectedly showing or producing an unusual or unexpected result over the applied reference on the record. An argument with respect to working in or around with mixing and matching a processing step and/or material without producing or showing an unusual or unexpected result could be an obvious variant in the art, have and are given a little to no value. Accordingly, applicants are urged to early show or provide an unusual or unexpected result over the applied reference. An initial search has found about a dozen of references to be next in line to be applied.

VI. Claims 1-23 with the independent claim 1 as the main invention are rejected under 35 U.S.C. 103(a) as being unpatentable Spencer et al (EP 0707 186 as submitted).

(1) It is conventional or well known in the art that hydrogen peroxide is biocidal agent.

(2) It is conventional or well known in the art to use a chamber to contain and sterilize a material.

(3) It is conventional or well known in the art to use a negative atmospheric pressure to enhance biocidal process before and/or after a material being contact with a biocidal agent.

(4) It is conventional or well known in the art to use a plasma process to enhance a biocidal process.

(5) It is conventional or well known in the art to ventilate the processed chamber to atmospheric pressure to safely open the processed chamber.

(6) It is also conventional or well known in the art to sterilizing a material at less than 39°C.

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One in the art has been working in and around with mixing and matching the above embodiments to find the best or most effect process to sterilize a material. Evidence can be seen in at least Spences et al. Please see the whole disclosure or the applied reference, especially at col.1:25-44 and 2:53 to 4:11 and figure 2. Since Spences et al disclose, teach and suggest the main and essential embodiments of the claimed invention, the above claims are found to be rendered prima facie obvious by Spences et al.

Since the processing steps and the material in the claimed invention are found to be conventional or well known in the art, a patentable may be obtained by objectedly showing or producing an unusual or unexpected result over the applied reference on the record. An argument with respect to working in or around with mixing and matching a processing step and/or material without producing or showing an unusual or unexpected result could be an obvious variant in the art, have and are given a little to no value. Accordingly, applicants are urged to early show or provide an unusual or unexpected result over the applied reference. An initial search has found about a dozen of references to be next in line to be applied.

VII. Claims 1-23 with the independent claim 1 as the main invention are rejected under 35 U.S.C. 103(a) as being unpatentable Jacobs et al (EP 0 302 420 as submitted).

- (1) It is conventional or well known in the art that hydrogen peroxide is biocidal agent.
- (2) It is conventional or well known in the art to use a chamber to contain and sterilize a material.
- (3) It is conventional or well known in the art to use a negative atmospheric pressure to enhance biocidal process before and/or after a material being contact with a biocidal agent.

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(4) It is conventional or well known in the art to use a plasma process to enhance a biocidal process.

(5) It is conventional or well known in the art to ventilate the processed chamber to atmospheric pressure to safely open the processed chamber.

(6) It is also conventional or well known in the art to sterilizing a material at less than 39°C.

One in the art has been working in and around with mixing and matching the above embodiments to find the best or most effect process to sterilize a material. Evidence can be seen in at least Jacobs et al. Please see the whole disclosure or the applied reference, especially at page 3:10-25 and 36 to 4:53, Examples and claims. Since Jacobs et al disclose, teach and suggest the main and essential embodiments of the claimed invention, the above claims are found to be rendered prima facie obvious by Jacobs et al.

Since the processing steps and the material in the claimed invention are found to be conventional or well known in the art, a patentable may be obtained by objectedly showing or producing an unusual or unexpected result over the applied reference on the record. An argument with respect to working in or around with mixing and matching a processing step and/or material without producing or showing an unusual or unexpected result could be an obvious variant in the art, have and are given a little to no value. Accordingly, applicants are urged to early show or provide an unusual or unexpected result over the applied reference. An initial search has found about a dozen of references to be next in line to be applied.

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VIII. Claims 1-23 with the independent claim 1 as the main invention are rejected under 35 U.S.C. 103(a) as being unpatentable Wu et al (4,643,876 as submitted).

- (1) It is conventional or well known in the art that hydrogen peroxide is biocidal agent.
- (2) It is conventional or well known in the art to use a chamber to contain and sterilize a material.
- (3) It is conventional or well known in the art to use a negative atmospheric pressure to enhance biocidal process before and/or after a material being contact with a biocidal agent.
- (4) It is conventional or well known in the art to use a plasma process to enhance a biocidal process.
- (5) It is conventional or well known in the art to ventilate the processed chamber to atmospheric pressure to safely open the processed chamber.
- (6) It is also conventional or well known in the art to sterilizing a material at less than 39°C.

One in the art has been working in and around with mixing and matching the above embodiments to find the best or most effect process to sterilize a material. Evidence can be seen in at least Wu et al. Please see the whole disclosure or the applied reference, especially at the figure 3 and claims. Since Wu et al disclose, teach and suggest the main and essential embodiments of the claimed invention, the above claims are found to be rendered prima facie obvious by Wu et al.

Since the processing steps and the material in the claimed invention are found to be conventional or well known in the art, a patentable may be obtained by objectedly showing or producing an unusual or unexpected result over the applied reference on the record. An argument

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with respect to working in or around with mixing and matching a processing step and/or material without producing or showing an unusual or unexpected result could be an obvious variant in the art, have and are given a little to no value. Accordingly, applicants are urged to early show or provide an unusual or unexpected result over the applied reference. An initial search has found about a dozen of references to be next in line to be applied.

IX. Claims 1-23 with the independent claim 1 as the main invention are rejected under 35 U.S.C. 103(a) as being unpatentable Jacobs et al (EP 0 302 420 as submitted) together with , Jacob et al (4,659,422 as submitted), Graves et al (6,159,422 as submitted), Spences et al (0 707 186 as submitted) and Wu et al (1 040 839 as submitted).

(1) It is conventional or well known in the art that hydrogen peroxide is biocidal agent.

(2) It is conventional or well known in the art to use a chamber to contain and sterilize a material.

(3) It is conventional or well known in the art to use a negative atmospheric pressure to enhance biocidal process before and/or after a material being contact with a biocidal agent.

(4) It is conventional or well known in the art to use a plasma process to enhance a biocidal process.

(5) It is conventional or well known in the art to ventilate the processed chamber to atmospheric pressure to safely open the processed chamber.

(6) It is also conventional or well known in the art to sterilizing a material at less than 39°C.

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One in the art has been working in and around with mixing and matching the above embodiments to find the best or most effect process to sterilize a material. Evidence can be seen in at least Wu et al. Please see the whole disclosure or the applied reference, especially at page 3:10-25 and 36 to 4:53, Examples and claims. Since Wu et al disclose, teach and suggest the main and essential embodiments of the claimed invention, the above claims are found to be rendered prima facie obvious by Wu et al. The secondary references are used to supplied secondary embodiments as cited in the instant dependents claims.

Since the processing steps and the material in the claimed invention are found to be conventional or well known in the art, a patentable may be obtained by objectedly showing or producing an unusual or unexpected result over the applied reference on the record. An argument with respect to working in or around with mixing and matching a processing step and/or material without producing or showing an unusual or unexpected result could be an obvious variant in the art, have and are given a little to no value. Accordingly, applicants are urged to early show or provide an unusual or unexpected result over the applied reference. An initial search has found about a dozen of references to be next in line to be applied.

IX. There are few of the references being found to be next in line to be applied each time with at least two references.

6,627, 150

6,458,321

6,365,102

6,355,448

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XI. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa V. Le whose telephone number is 703-308-2295. The examiner can normally be reached on 6:30AM-5:00PM, M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Baxter can be reached on 703-308-2303. The fax phone numbers of the examiner is 703-746-7172. Since there is a newly electronic filing procedure for all initial communicating papers and all responses to an Office action, the examiner fax phone number is not for use to receive any fax in response to an Office action. Applicant is requested and required to send all initial communicating papers and all response to Office action to a central paper or fax receiving center for an electronic scanning procedure.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Hoa V. Le
Primary Examiner
Art Unit 1752

HVL
30 September 2003

HOA VAN LE
PRIMARY EXAMINER

